

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

W.R. GRACE & COMPANY, and
KOOTENAI DEVELOPMENT
CORPORATION,

Defendants

Civ. No. 00-167-M-DWM

DECLARATION OF MARK G. OWENS

I, Mark G. Owens, in accordance with 28 U.S.C. § 1746, declare as follows:

1. I am currently a minority shareholder in Kootenai Development Company, a Montana corporation ("KDC"). Until July 14, 2000, I was an officer, the President of KDC.

2. To the best of my knowledge KDC owns three parcels of property in and around Libby, Montana. Those parcels are described as follows:

a. In 1994 KDC purchased from W. R. Grace approximately 3,600 acres of property associated with a former vermiculite mine located approximately 7 miles northeast of the town of Libby (the "Mine Site"). The majority of the Mine Site property is timberland not associated with mining activities. Approximately 1,200 acres of the Mine Site was originally subject to a Montana mined land permit and reclamation bond. At the time KDC purchased the Mine Site, all of the Mine Site property subject to the mined land permit and reclamation bond, except for approximately 120 acres, had been released from the reclamation bond. The permit was transferred to KDC, and Grace and KDC have jointly participated in reclamation activities under an approved State of Montana Department of Environmental Quality reclamation plan. Except for its

1 reclamation activities under the approved reclamation plan, KDC has never been
2 involved in the past mining operations.

3 b. KDC also owns an approximately 20-acre parcel of property located
4 between Highway 37 and the Kootenai River (the "Kootenai Flyway"). The Kootenai
5 Flyway is located just up river of Grace's former screening facility (the "Screening
6 Facility"). To the best of my knowledge the Screening Facility is currently owned by
7 Mel and Lerah Parker.

8 c. KDC also owns an approximately 42-acre parcel on the Kootenai River on
9 the bank opposite from the Screening Facility, known as the "Bluffs." A former railroad
10 loading area associated with Grace's past operations is located on an approximately ¼
11 acre portion of the Bluffs property. There are also two old stockpile areas associated with
12 Grace's former loading operations located on top of the bluff above the railroad loading
13 area. Each stockpile area covers approximately one-half to one acre of ground.

14 3. In approximately November of 1999, KDC was approached by Paul Peronard of
15 EPA regarding access to properties owned by KDC. I understood the access to the Mine Site
16 was for sampling and analytical activities.

17 4. During discussions with Mr. Peronard from November-December 1999 until mid-
18 July of 2000, KDC verbally assented to several EPA oral requests for access to investigate the
19 KDC properties and to take samples. During this time, representatives of EPA would contact
20 KDC with a request for access limited to a specific date and time for investigation activities.
21 Representatives of KDC, Grace and the State of Montana Department of Environmental Quality
22 often accompanied EPA representatives during these investigations.

23 5. Because EPA's access requests were limited to specific dates, the access KDC
24 verbally granted to EPA was not permanent. As discussed below, those access requests did not
25

1 include the disposal of materials at the Mine Site or activities other than investigation and
2 sampling discussed above.

3 6. In the spring of 2000, Mr. Peronard first brought to my attention EPA's interest in
4 using the Mine Site for the disposal of materials from EPA's activities at the Screening Facility
5 and possibly from other properties. During KDC's discussions with EPA and the State of
6 Montana Department of Environmental Quality, several different locations for disposal within
7 the Mine Site were discussed. To the best of my recollection, final agreement on any particular
8 disposal locations within the Mine Site was never reached, while I was a KDC officer.

9 7. During my first discussions with Mr. Peronard regarding use of the Mine Site for
10 disposal of offsite materials, Mr. Peronard told me that EPA eventually would turn its focus to
11 the Mine Site itself and that costs related to addressing Grace's past activities on the KDC
12 property may run into the millions. He also explained that by law, depending upon a party's
13 ability to pay, EPA had the ability to look to others to incur or pay those costs and that this could
14 include KDC. He also explained that EPA sometimes reached agreements with parties about
15 payment for such costs and those agreements could provide some protections for liability.

16 8. EPA's attorney, Matt Cohen, contacted KDC's attorney, Dale Cockrell, to discuss
17 EPA's proposal to bring material from the Screening Plant and possibly other properties onto the
18 Mine Site. Through its attorneys, EPA and KDC discussed a proposal under which KDC would
19 grant EPA the right to use a portion of the Mine Site for disposal of materials from the Screening
20 Plant and possibly other properties in exchange for a release of liability and covenant not to sue
21 under CERCLA and KDC's agreement to pay EPA 25% of the net fair market value of the KDC
22 properties if they were subsequently sold. EPA's and KDC's attorneys discussed that the release
23 and covenant not to sue would be intended to cover all CERCLA liability related to EPA's
24 disposal activity and asbestos at the Mine Site. EPA did not transmit these terms to KDC in
25 writing and these terms were never finalized.

9. Although I had some general discussions with Mr. Peronard about cleanup activities on the properties owned by KDC, we never discussed the specifics of such activities and EPA did not request of KDC nor did KDC grant oral or written access to EPA to conduct such activities on any KDC property while I was president of the corporation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This Declaration is executed this 29th day of September, 2000 at Libby, Montana.

Mark G. Owens